

## **REMARKS**

The Application presently includes claims 1-26. Claims 14-26 were withdrawn from consideration. Claim 13 was rejected by the Examiner under 35 U.S.C. § 112, second paragraph.

Claims 1-10, and 12 were rejected as being anticipated by Kott et al., U.S. Patent No. 4,750,967 ("Kott '967") under 35 U.S.C. §102(b). Claim 11 was rejected by the Examiner as being unpatentable over Kott '967 in view of Niebliing et al., U.S. Patent No. 5,217,563 ("Nielbling '563") under 35 U.S.C. §103(a). No new matter has been added. The Applicant respectfully traverses the rejections, and requests that the Examiner withdraw the rejections and pass the application to allowance.

### **1. Rejection of Claim 13 Under 35 U.S.C § 112**

Claim 13 was rejected by the Examiner under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. However, the Examiner stated that claim 13 would otherwise be deemed allowable if written in independent form. The Examiner argues that claim 13 recites that "weight comprises a container," and it is uncertain whether this container is the same container that was previously described in claims 1-12. In response, Applicant has amended claim 13 to read "a second container." The "second container" of the weight is clearly different from the "container" of claim 1. Fig.1 illustrates that a weight 55 having a second container 57 is different from the container 12 of claim 1. Therefore, Applicant submits that claim 13, as amended, is not indefinite under 35 U.S.C. § 112, second paragraph. Accordingly, it is respectfully submitted that the rejection of claim 13 has been overcome. Accordingly, reconsideration and passage to allowance is requested.

2. **Claim Rejections under U.S.C. § 102(b) of Claims 1-10, and 12**

The Examiner rejected claims 1-10, and 12 as being anticipated by Kott '967 under 35 U.S.C. §102(b). Applicant respectfully disagrees with the Examiner's characterization of Kott '967, and respectfully traverses the rejection of claims 1-10, and 12 because Kott '967 does not disclose an apparatus for forming a bathtub liner having a means for increasing the pressure within a cavity of a container, to in turn, force a bathtub liner outwardly away from the cavity as recited, *inter alia*, in Applicant's claim 1. Indeed, Kott '967 discloses an apparatus for in situ forming of a bathtub liner which creates a *vacuum* within a cavity to force a bathtub liner *inward* toward an existing contour of a bathtub.

a. **Kott '967 Does Not Disclose an Apparatus for Forming a Bathtub Liner Having a Means for Increasing Pressure Within the Cavity**

Applicant respectfully submits that independent claim 1 and dependent claims 2-10, and 12, are not anticipated by Kott '967 because Kott '967 cannot possibly disclose an apparatus for forming a bathtub liner having a means for *increasing the pressure* within a cavity of a container. In Kott '967, there is disclosed a plastic sheet placed on top of the washbasin and cut to size so that it abuts the edges of the walls of the washbasin. (Kott '967, col. 4, lines 4-6). A flexible adhesive material is placed along the periphery of the washbasin, so that the plastic sheet adheres to the washbasin. (col. 4, lines 20-23). A frame is then placed on the external surface of the plastic sheet, the shape of the frame generally coinciding with that of the washbasin. (col. 4, lines 31-33). A radiant heater is placed on the frame such that the frame locates the heater at a predetermined distance from the surface of the plastic sheet. When the plastic sheet reaches its melting temperature, a portable vacuum unit 90, having a pair of vacuum tanks 94, 96 connected in series with a vacuum pump 92, is used to "create a vacuum within the cavity 12 and thereby mold the liner to the interior of the bathtub." (col. 13, lines 52-55).

The only means for the liner to move toward the bathtub or interior is by vacuum or sub-atmospheric pressure. This clearly cannot meet the requirement of claim 1, wherein there is required a means for increasing the pressure within the cavity. The pressure in the cavity of Kott '967 is clearly reduced and therefore, claim 1, and dependent claims 2-10 and 12 are not anticipated by Kott '967 because Kott '967 does not disclose an apparatus for forming a bathtub liner having a means for *increasing the pressure* within a cavity of a container.

Additionally, the difference between utilizing a pressure increase and creating a vacuum to obtain a molded bathroom liner is not a mere design preference. The difference results in substantially different equipment requirements and related measures. For example, Kott '967 requires an evacuation hole to be drilled into the existing bathtub. Col 3, line 65-68 states specifically that in order for the vacuum to inwardly pull the liner onto the surface of the washbasin, "at least one evacuation hole is drilled through an accessible side of the washbasin and on through the surface to be lined with the plastic sheet." The evacuation hole is preferably drilled in a corner of the washbasin. (col. 3, lines 65-68). This results in permanent disfigurement of the existing bathtub, and is a significant extra time-consuming step in the process.

**b. Kott '967 Does Not Disclose an Apparatus Which Forces The Liner Outward Toward an Existing Bathtub**

Applicant additionally contends that Kott '967 cannot possibly disclose an apparatus that forces a bathtub liner, *outwardly* away from the cavity. As discussed above, to form the new bathtub liner in Kott '967, a plastic sheet is first placed flat on the top of the washbasin, and a frame member and a heating device are subsequently placed on top of the plastic sheet. Once heated to an adequate temperature, a portable vacuum device then must suck the plastic sheet inwardly onto the existing bathtub cavity to form the new bathtub liner. See Kott '967, col. 13,

lines 52-55, “[w]hen the liner has reached a sufficiently pliable state, the vacuum unit is activated to create a vacuum within the cavity and thereby mold the liner to the contour of the bathtub.” Accordingly, Kott ‘967 does not anticipate claim 1 because in Kott ‘967, the portable vacuum device 90 must force/suck the bathtub liner inwardly, and not outwardly as required in Applicant’s claim 1, to mold the liner to the contour of the bathtub.

In view of the above, Applicant submits that independent claim 1 is neither taught, disclosed, or suggested by Kott ‘967, either alone or in combination with any other cited prior art reference. Accordingly, it is requested that the Examiner's rejection under 35 U.S.C. §102 be withdrawn and, that claim 1 should be deemed in condition for allowance. Inasmuch as claims 2-12 (and 13) depend from claim 1, it is respectfully submitted that those claims should likewise be deemed in condition for allowance at the present time. Although the Examiner rejected claim 11 under 35 U.S.C. §103, it is submitted that such a rejection be withdrawn and/or deemed moot since claim 11 depends from claim 1.

### **3. Conclusion**

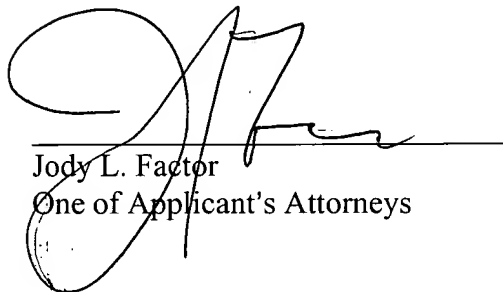
In view of the above, the Applicant submits that claims 1-13 should now be deemed in condition for allowance. Therefore, reconsideration and passage to allowance of all of such claims are respectfully requested.

Should anything further be required, a telephone call to the undersigned at (312) 226-1818 is respectfully requested.

Respectfully submitted,

FACTOR & PARTNERS, LLC

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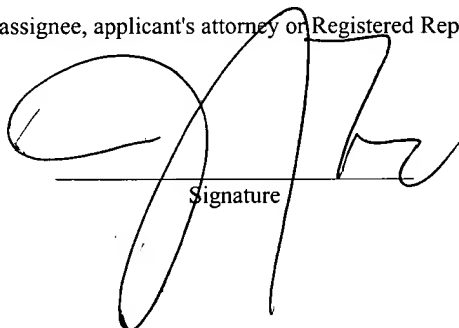
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**CERTIFICATE OF MAILING**

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Jody L. Factor

Name of Applicant, assignee, applicant's attorney or Registered Representative



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